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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,354	08/20/2003	Daniel J. Philpott	60,130-1752;03MRA0141	5864

26096 7590 06/01/2005

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EXAMINER

KRAMER, DEVON C

ART UNIT PAPER NUMBER

3683

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,354

Applicant(s)

PHILPOTT, DANIEL J.

Examiner

Devon C Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-8 and 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

- 1) Claims 17-21 are objected to because of the following informalities:

Claim 17 line 8, "the predefined angular position" should be –the predetermined angular position–. Appropriate correction is required.

Claim Rejections - 35 USC § 102

- 2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 3) Claims 1, 4-8 and 15-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hockley (5699880).

In re claims 1, 16 and 22-23, White et al provides an overstroke indicator system (figure 4) attached to a housing portion (22); and an operating shaft (18) which rotates about a pivot axis to actuate the overstroke indicator system (32, 34, 36) mounted to the housing in response to an overstroke condition. Please note that the indicators can be considered sensors, further note that applicant's housing, as claimed, can be a number of different parts.

In re claims 4-7, please note that the indicators are located in an angular position relative to the pivot axis adjacent a path of rotation of the shaft assembly.

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In re claims 8, 15 and 21, see col. 6 lines 33-35. Note that any portion of the device can be considered a housing portion. For example, the bracket member 30 can be the housing portion.

In re claims 17-20, please note that the method is inherent to the device of Hockley as cited in the rejection of claims 1 and 2 above.

4) Claims 1, 4-7, 17-20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by White et al (H2026).

In re claims 1 and 22-23, White et al provides a housing portion (51), an overstroke indicator system (figure 4); and an operating shaft (36) which rotates about a pivot axis to actuate the overstroke indicator system in response to an overstroke condition. Please note that the housing portion of White houses and end of an adjustment rod (40) and a pin (54).

In re claims 4-5 and 16, White et al provides an overstroke sensor (56) located in an angular position relative to the pivot axis adjacent a path of rotation of an end section of the operating shaft. (Figures 3-4)

In re claim 6, White et al teaches an overstroke sensor (56) located in an angular position relative to the pivot axis adjacent a path of rotation of a tab (part that extends out from 52, or upper portion of 36) extending from the operating shaft opposite an end segment (lower portion of 36).

IN re claim 7, see elements 56 and 57.

In re claim 17-19, please note that the method is inherent to the recited features of White et al in the rejection of claim 1 above.

In re claim 20, please note that since element 51 is the housing of White et al, the overstroke sensor extends toward that housing when an overstroke occurs.

Claim Rejections - 35 USC § 103

5) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6) Claims 8, 15 and 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over White et al (H2026) in view of Hockley (5699880).

White et al lacks the teaching of a mechanical overstroke member that has a buckling member.

Hockley teaches a flexible member (32, 34) used for a wear sensor.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the wear sensor of White et al with a flexible member of Hockley et al to provide an operator with a signal of the extent of wear and to prevent the parts from becoming hung up on the indicator.

Response to Arguments

7) Applicant's arguments filed 3/8/05 have been fully considered but they are not persuasive. Applicant argues that White lacks the teaching of an overstroke indicator mounted to a housing portion. Please note that applicant does not state, "a brake

housing portion". A "housing portion" can be considered any part in White which receives another therein. Applicant further argues the combination of White over Trenado in claim 8, the examiner has made a new grounds of rejection in claim 8 due to applicant's amendment.

Conclusion

8) THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 571-272-7118. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devon C Kramer
Examiner
Art Unit 3683

DK

DEVON C. KRAMER
PATENT EXAMINER

Devon Kramer
5/27/05